

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHARLIE H. RAY

Case No. 1:08-cv-30

Plaintiff,

Chief Judge Susan J. Dlott
Magistrate Judge Timothy S. Black

vs.

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

**REPORT AND RECOMMENDATION¹ THAT PLAINTIFF'S UNOPPOSED
MOTION FOR FEES (Doc. 17) BE GRANTED**

This is a Social Security disability benefits appeal for which the Court, acting pursuant to sentence four of 42 U.S.C. § 405(g), reversed the non-disability finding of the Administrative Law Judge (“ALJ”), and ordered a remand to the ALJ for further proceedings. (Doc. 15). Seeking to be compensated for his work in obtaining the remand, Plaintiff’s counsel has filed a fee petition under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. (Doc. 17). The request for \$3,000.00 represents 12 hours of work at \$250.00 an hour. (*Id.*) The Commissioner did not object to Plaintiff’s petition.

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

The EAJA provides that:

“[A] court shall award to a prevailing party . . . fees and other expenses . . . incurred by that party in any civil action . . . including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction over that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.”

28 U.S.C. § 2412(d)(1)(A).

Recognizing that Plaintiff is a “prevailing party” as defined; that this civil action was brought against the United States to review agency action by the Social Security Administration; and in a court with proper subject matter jurisdiction, *see* 42 U.S.C. § 405(g), EAJA fees appear warranted. There is no claim that the Commissioner’s position during this litigation was “substantially justified” and no evidence that “special circumstances” exist to bar a fees award.

It is therefore **RECOMMENDED** that the unopposed EAJA fee petition (Doc. 17) be **GRANTED**, and that Plaintiff’s counsel be **AWARDED** the requested \$3,000.00 in fees.

Date: April 19, 2010

s/ Timothy S. Black
Timothy S. Black
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **14 DAYS** after being served with this Report and Recommendations. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within **14 DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 106 (1985).